the innocuous propositions that (1) Local Civil Rules supplement and should be construed in harmony with the Federal Rules of Civil of Procedure, and (2) Federal Rule of Civil Procedure 56(c) requires the court to consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there are any genuine issues of material fact. *See id.*

Local Civil Rule 7(h) does not "conflict" with *Burke*. As an initial matter, the D.C. Circuit disagreed that the District Court did not follow its precedent and affirmed the District Court's decision. *See* Pet. App. 22a-23a. Moreover, the D.C. Circuit determined that the District Court's application of law was straightforward, ordered that no oral argument was necessary, disposed of the appeal in a *per curiam* decision totaling a mere few paragraphs, and ruled that its non-controversial decision did not merit publication. *See id.*[4] The D.C. Circuit's disposition of this case, as that court appropriately recognized, is of moment only to these particular litigants. It therefore presents no issues of broader significance justifying review by this Court.

Moreover, Petitioners cannot explain how the District Court's Local Civil Rule 7(h) allegedly conflicts in any way with Federal Rule of Civil Procedure 56(c).[5] Rule 56(c) states that summary judgment is appropriate if the evidence before the court shows that there are no genuine issues of

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by the moving party in its statement of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion."

[4] Under D.C. Circuit Rule 36, the determination to not publish the decision means that there is no "general public interest" in the decision and that the panel saw "no precedential value" in it. D.C. Cir. R. 36.

[5] Petitioners did not comply with the District Court's Local Civil Rule 7(h) (*see* Pet. App. 3a), and they never explain their failure to do so.

material facts and the movant is entitled to judgment as a matter of law, and Local Civil Rule 7(h) merely addresses the consequences of the non-movant's failure to respond to the movant's statement of undisputed material facts. *See* Fed. R. Civ. Proc. 56(c); D.D.C. Local Civ. R. 7(h). The two rules are entirely consistent with each other, and a plain reading of them indicates that there is no conflict between them. In fact, local rules similar to Local Civil Rule 7(h) are common among the federal district courts.[6]

In any event, the District Court correctly applied D.C. Circuit precedent to the facts of this case. Consistent with *Burke* and Federal Rule of Civil Procedure 56(c), the District Court considered the evidence in the record before it. Petitioners' submissions to the District Court consisted almost entirely of their own affidavits and interrogatory answers, which the District Court correctly found to be "sparse," "scattershot," and "discursive" in nature. *See* Pet. App. 3a. Moreover, on repeated occasions, the District Court noted that the Petitioners' "evidence" consisted solely of their unsupported and conclusory allegations, which often contradicted their own deposition testimony. *See id.* at 14a-17a. *See also id.* at 19a ("On the whole, plaintiffs' submissions leave much to be desired in terms of clarity and evidentiary support."). In short, the District Court fully considered the Petitioners' submissions, but properly determined that they were unsupported by the evidence and failed to raise any genuine issues of material fact.

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[6] *See, e.g.*, C.D. Cal. Local R. 56-3; S.D. Fla. Local R. 7.5(D); N.D. Ga. Local Civ. R. 56.1(B)(2)(a)(2); D. Kan. Local R. 56.1(a); N.D. Ill. Local R. 56.1(a); N.D. Ind. Local R. 56.1(b); N.D. Iowa Local R. 56.1(b); M.D. La. Local Civ. R. 56.2; D. Me. Local R. 56(f); D. Mass. Local R. 56.1; E.D. Mo. Local R. 7-4.01(E); D.N.M. Local Civ. R. 56.1(b); E.D.N.Y. Local Civ. R. 56.1(c); S.D.N.Y. Local Civ. R. 56.1(c); D. Or. Local R. 56.1(f); M.D. Penn. Local R. 56.1; W.D. Penn. Local R. 56.1(E); M.D. Tenn. Local R. 8(b)(7)(g); E.D. Tex. Local R. CV-56(c); E.D. Va. Local Civ. R. 56.1(B).

III. THE DISTRICT COURT'S FACTUAL FINDINGS CHALLENGED BY PETITIONERS WERE FULLY SUPPORTED BY THE EVIDENCE.

The core of Petitioners' argument is that certain factual findings by the District Court were incorrect. *See* Pet. 2-3, 5. Not only is this claim without merit, it is also without effect. As this Court held long ago, "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). *See also* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

In any event and contrary to Petitioners' assertions, the two factual findings challenged by Petitioners were fully supported by and did not misstate the record.

First, Petitioners challenge the District Court's finding that the man who kicked Petitioner Blakeney was an independent contractor – as opposed to an employee – of Pepco. *See* Pet. 5. The District Court characterized the man as an independent contractor because the Second Amended Complaint described him as a "contract worker" and there was no evidence in the record (submitted by Plaintiffs or otherwise) to the contrary. *See* Pet. App. 6a.[7] In any event, this factual finding was not material to the District Court's judgment. The District Court determined that the alleged kick was not actionable "because it is unsupported by any evidence of racial animus." *Id.* at 15a. Status as an independent contractor or employee played no part in the District Court's decision. *See id.*

Second, Petitioners challenge the District Court's finding that Petitioner Blakeney conceded during his deposition the

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[7] The District Court's determination was further supported by evidence in Pepco's Statement of Undisputed Material Facts, to which Petitioners did not respond.

untruth of certain allegations that two white employees were treated more favorably than him as part of a rotation program. *See* Pet. 5. The District Court made this determination in reliance upon evidence and deposition testimony of Petitioner Blakeney submitted by Pepco. *See* Pet. App. 15a. Petitioners did not rebut that evidence or submit any contrary evidence. *See id.* In light of the undisputed factual record before it, the District Court's factual finding was not erroneous.

In sum, even if incorrect factual findings merited this Court's review – which they do not – the two factual findings at issue here were fully supported by the evidence before the District Court.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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